



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2013

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2013-02948

Dear Ms. Quinn:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 481554 (Reference Number 13-242).

The City of Cedar Park (the "city") received a request for all records pertaining to a named individual for a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. A compilation of an individual's criminal history record information is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in

compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, the request seeks unspecified records pertaining to the named individual. Thus, we find the request requires the city to compile the named individual's criminal history. Accordingly, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note you have submitted records in which the named individual is not listed as a suspect, arrestee, or criminal defendant. These records do not constitute a compilation of the named individual's criminal history and may not be withheld under section 552.101 on that basis. We will, however, consider your arguments against disclosure of this information.

The types of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find some of the information at issue is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the city must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. You have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal

investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). You state Exhibit C pertains to a concluded criminal case that did not result in a conviction or deferred adjudication. Thus, the city may withhold Exhibit C under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. *Id.* § 552.130(a)(1)-(2). You state the city has redacted some motor vehicle record information as permitted by section 552.130(c) and Open Records Decision No. 684 (2009).¹ Upon review, we find the city must withhold the additional information you and we have marked under section 552.130.

In summary, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold Exhibit C under section 552.108(a)(2) of the Government Code. The city must withhold the information you and we have marked under section 552.130 of the Government Code. The city must release the remaining information.²

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

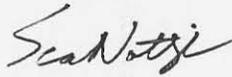
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

¹Section 552.130(c) authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including a Texas license plate number under section 552.130(a)(2) of the Government Code, without the necessity of requesting a ruling from this office.

²We note the requestor has a special right of access to some of the information being released. *See* Gov't Code § 552.023. If the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/som

Ref: ID# 481554

Enc. Submitted documents

c: Requestor
(w/o enclosures)

